

Bill No. 27-01
Concerning: Development Impact Tax -
Amendments
Revised: 10-29-01 Draft No. 2
Introduced: July 31, 2001
Enacted: October 30, 2001
Executive: November 12, 2001 (vetoed)
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Praisner

AN ACT to:

- (1) revise the tax categories and rates of the Development Impact Tax and the provisions for allowing exemptions from and credits against the tax;
- (2) replace the Clarksburg, Germantown, and Eastern Montgomery Impact Tax Districts with a countywide district;
- (3) repeal the requirement that the County Executive submit a biennial report on the impact tax;
- (4) expand the definition of impact highways to include certain transportation facilities, and revise the restrictions on spending funds derived from the impact tax;
- (5) make clarifying and stylistic changes; and generally amend the law governing the Development Impact Tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Article VII, Development Impact Tax for Major Highways

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 52, Article VII is amended as follows:

**ARTICLE VII. DEVELOPMENT IMPACT TAX [FOR MAJOR
HIGHWAYS].**

52-47. Definitions.

In this Article the following terms have the following meanings:

* * *

(b) *Adequate Public Facilities Ordinance staging ceiling standards* means standards by which the area-wide adequacy of [major highways] transportation facilities serving a proposed development are judged. APFO staging ceiling standards do not include requirements for other on-site or off-site transportation improvements that may be separately required[, nor do they include] or standards relating to local area review[,] which may be independently required.

(c) *Annual growth policy* means [current] the annual growth policy most recently adopted under Chapter 33A to provide guidelines for the administration of the Adequate Public Facilities Ordinance.

* * *

(h) *Development impact tax* means a pro rata tax imposed before a building permit is issued for development [in an impact tax district] which is intended to defray a portion of the costs associated with [impact highway improvements in the tax district] transportation facilities that are necessary to accommodate the traffic generated by the development.

* * *

[(l) *Impact tax district* means a planning policy area or combination of planning policy areas described under Section 52-49(c).]

[(m)] *Impact tax district transportation program* means the transportation improvement program described under Section 52-58.]

[(n)] (l) *Improvement* means a highway, intersection improvement, transit center, [and] bus, bus shelter, hiker-biker trail, sidewalk connection, or park and ride lot [projects], including planning, engineering, design services, right-of-way acquisition, grading, paving, curbs, gutters, drainage, sidewalks, signalization, signage, and all other construction and associated costs.

[(o)](m) *Master plan of highways* means the “Master Plan of Highways” [prepared by the Maryland-National Capital Park and Planning Commission,] adopted by the [Montgomery County] Planning Board and approved by the District Council, and any similar plan adopted by either Gaithersburg or Rockville.

[(p)](n) *Impact [highways] transportation improvement* means [the arterial highway segments, transit centers, and park-and-ride facilities under] an improvement listed in Section 52-58.

[(q)] *Maryland-National Capital Park and Planning Commission* means the agency established under Article 28 of the Maryland Code.]

[(r)] (o) *Nonresidential* means the use of a building that is not a residential use, and includes:

- (1) offices, including general, medical, office parks, research parks, townhouse office buildings, government offices, and other similar uses;
- (2) industrial uses, including truck terminals, warehouses, light or heavy industrial and manufacturing, industrial parks, biotechnology research and development facilities and related office space, and other similar uses;

(3) retail uses, including stores or shopping centers engaging in the sale of goods, restaurants, vehicle sales or service, banks or savings and loan institutions, theaters, post offices and other similar uses;

[(4) places of worship;]

[(5) private elementary and secondary schools;] and

[(6)] (4) other nonresidential uses, including places of worship, private elementary, [[or]] secondary, or post-secondary schools, hotels, motels, day care centers, hospitals, nursing homes, recreational facilities, and other public facilities and similar uses;

[(s)] (p) *Per-unit development impact tax* means the development impact tax [listed under Section 52-57(b)] imposed under this Article.

[(t)] (q) *Planning policy area* means any of the geographic areas described in the annual growth policy for which [the] APFO staging ceiling standards are identified.

[(u)] (r) *Programmed [highways] transportation improvement* means [highway] an improvement [projects that are contained within] listed in the current approved County capital improvements program, [or] the state consolidated transportation program, or any similar program adopted by either Gaithersburg or Rockville.

[(v)] (s) *Property owner* means any person, group of persons, firm, corporation, or other entity with a proprietary interest in the land on which a building permit has been requested.

[(w)](t) *Residential* means the use of a building as a dwelling unit.

(1) *Single-family detached residential* includes[: (A)] detached single-family dwelling units. [; and]

(2) Single-family attached residential includes: [(B)] townhouses, duplexes and other attached single-family dwelling units.

[(2)] (3) Multifamily residential includes:

- (A) garden apartments;
- (B) mid-rise and high-rise apartments;
- (C) condominiums other than townhouses; and
- (D) mobile homes.

[(3)] (4) Multifamily-senior residential means multifamily housing and related facilities for elderly or handicapped persons, as defined in Section 59-A-2.1, with occupancy restricted as provided in Section 59-G-2.35(b), and multifamily housing units located in the age-restricted section of a planned retirement community, as defined in Section 59-C-7.441.

[(x)] (u) Staging ceiling means the maximum amount of land development that can be accommodated in a planning policy area consistent with APFO staging ceiling standards given the programmed [highways] transportation facilities.

[(y)] Traffic impact means the relative effect of different land uses on the need for impact highways in an impact tax district based on relative trip generation, average trip length, and the proportion of new trips, as described more fully in Section 52-57.]

[(z)] Unprogrammed highways means improvement projects not contained within the current approved County CIP or the state consolidated transportation program, and which, if programmed, would increase the transportation system capacity and therefore the staging ceiling in an impact tax district.]

52-48. Findings; purpose and intent.

- (a) The master plan of highways indicates that certain roads are needed in planning policy areas. Furthermore, the [comprehensive planning policies report] Annual Growth Policy indicates that the amount and rate of growth projected in certain planning policy areas will place significant demands on the County for provision of major highways necessary to support and accommodate that growth.
- (b) Montgomery County, through its adoption of the Capital Improvements Program, indicates its commitment to provide transportation infrastructure.
- (c) Montgomery County has determined that a combination of approaches will be necessary to fully achieve the level of [highway] transportation improvements needed to accommodate growth [in the impact tax districts]. Thus, Montgomery County proposes to fund certain master planned [highways up to 50 percent] transportation improvements through development impact taxes to allow new growth [in impact tax districts].
- (d) Imposing a development impact tax that requires new development [in certain impact tax districts] to pay [their] its pro rata share of the costs of [impact highway] transportation improvements necessitated by [such new] that development in conjunction with other public funds is a reasonable method of raising the funds to build [such] improvements in a timely manner.
- (e) The development impact tax will fund, in part, the improvements necessary to increase the transportation system capacity [in the impact tax districts], thereby allowing development to proceed. Development impact taxes will be used exclusively for [impact highways] transportation improvements.

135 [(f) In order to assure that the development impact taxes reflect the
 136 reasonable pro rata share of the costs of the additional highway
 137 improvements associated with each new development, the
 138 development impact tax is based on relative trip impact associated
 139 with the number and type of dwelling units and square footage and
 140 type of nonresidential development.]

141 [(g)] (f) In order to assure that the necessary [highway] transportation
 142 improvements are constructed in a timely manner, the County intends
 143 to assure the availability of funds sufficient to construct the [impact
 144 highway] transportation improvements.

145 [(h)] (g) The County retains the power to determine the [highway]
 146 transportation improvements to be funded by development impact
 147 taxes; to estimate the cost of such improvements; to establish the
 148 proper timing of construction of the improvements so as to meet
 149 APFO staging ceiling standards where they apply; to determine when
 150 changes, if any, may be necessary in the County CIP; and to do all
 151 things necessary and proper to effectuate the purpose and intent of this
 152 Article.

153 [(i)] (h) [It is the intent of the] The County intends to further the public
 154 purpose of ensuring that an adequate transportation system is
 155 available in support of new development [in the impact tax districts. It
 156 is not the intent of this Article to collect a development impact tax
 157 from new development in the impact tax districts in excess of that
 158 development's pro rata share of the costs associated with the impact
 159 highway improvements, as measured by the development's
 160 contribution to traffic impact in the tax district].

161 [(j)] (i) The County's findings are based upon [the] adopted or approved
 162 plans, planning reports, and capital [improvements programs] budgets
 163 identified in this Article[, and specific studies conducted by the
 164 Department of Public Works and Transportation and its consultants].

165 [(k)] (j) [It is the intent of the] The County intends to impose development
 166 impact taxes [in an impact tax district] until [that area] the County has
 167 attained build-out as defined by the [applicable master plan] General
 168 Plan.

169 **52-49. Imposition and applicability of development impact taxes.**

170 (a) A development impact tax for [impact highways] transportation must
 171 be imposed before a building permit is issued for development [in
 172 each impact tax district].

173 (b) An applicant for a building permit for development [in an impact tax
 174 district] must pay a development impact tax in the amount and manner
 175 provided in this Article, unless a credit in the full amount of the
 176 applicable tax [is determined to be applicable] applies under Section
 177 52-55 or an appeal bond is posted under Section 52-56.

178 [(c)] The following impact tax districts are established, consisting of the
 179 following Planning Policy Areas described in the Annual Growth
 180 Policy:

181 (1) Germantown: Germantown East, Germantown Town Center,
 182 and Germantown West;

183 (2) Eastern Montgomery County: Fairland/White Oak and
 184 Cloverly;

185 (3) Clarksburg; Clarksburg.]

186 [(d)] The boundaries for impact tax districts and the need to create
 187 additional impact tax districts must be reviewed biennially using the

methodology under Section 52-59. The County Council must hold a public hearing before changing the boundaries for an impact tax district or creating a new impact tax district.]

[(e)] (c) Development impact taxes [must be accounted for and segregated by the impact tax district from which the taxes are received. The taxes] must be restricted in their use to funding transportation improvements [listed in the impact tax district transportation program for the district].

(d) Development impact taxes collected from developments located in the cities of Gaithersburg and Rockville must be accounted for separately according to the municipality where the funds originated. These tax revenues must be used only to fund transportation improvements listed in a memorandum of understanding between the County and the respective City, which must be approved by the County Council. If the County and either City do not agree on a memorandum of understanding regarding the use of impact tax revenues, the County Council may appropriate funds to improvements which are consistent with the master plan of the respective City.

[(f)] (e) A development impact tax must not be imposed on [the Montgomery County Government, Montgomery College, the Montgomery County Public School System, or the Maryland-National Capital Park and Planning Commission] a building owned, and used primarily, by any agency or instrumentality of federal, state, County or municipal government.

[(g)] (f) A development impact tax must not be imposed on:

- (1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville,
- (2) any Productivity Housing Unit, as defined in Section 25B-17(m), [and]
- (3) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 50% of the area median income, adjusted for family size[.] [[, and]] or
- (4) any development located in [[a Metro Station or MARC Station Policy Area as defined in the Annual Growth Policy]] an enterprise zone designated under state law.

52-50. Collection of development impact taxes.

- (a) The Department of Permitting Services must determine the amount of the applicable development impact tax.
- (b) Applicants for building permits for development [in an impact tax district] that is not exempt from the development impact tax must supply to the Department of Permitting Services for each requested building permit:
 - (1) The number and type of dwelling units, and the gross floor area of each unit and all enclosed common areas, for residential development; and
 - (2) The gross floor area and type of development for nonresidential development.

The applicant must submit for inspection relevant support documentation as the Department requires.

(c) The Department of Permitting Services must not issue a building permit for development [in an impact tax district] that is not exempt from the development impact tax unless:

- (1) the applicant has paid the applicable development impact tax;
- (2) the applicant is entitled to a credit under Section 52-55 in the amount of the applicable development impact tax; or
- (3) an appeal has been taken and a bond or other surety posted under Section 52-56.

(d) When a person applies to a city or town in the County for a building permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid. The Director of Finance must promptly refund any payment made for any building or part of a building for which a building permit is not issued by the city or town.

[(d)]	<u>(e)</u>	*	*	*
[(e)]	<u>(f)</u>	*	*	*
[(f)]	<u>(g)</u>	*	*	*
[(g)]	<u>(h)</u>	*	*	*
[(h)]	<u>(i)</u>	*	*	*
[(i)]	<u>(j)</u>	*	*	*
[(j)]	<u>(k)</u>	*	*	*

52-51. Calculation of development impact tax.

(a) The Department of Permitting Services must calculate the amount of the applicable development impact tax due for each building permit by:

- 265 (1) determining [the applicable impact tax district] whether the
266 permit is for development that is exempt from the tax under
267 Section 52-49(f);
- 268 (2) verifying the number and type of dwelling units and the gross
269 floor area and type of nonresidential development for which
270 each building permit is sought;
- 271 (3) determining the applicable per-unit development impact tax
272 under Section 52-57; and
- 273 (4) multiplying the applicable per-unit development impact tax by:
274 (A) the appropriate number of dwelling units; and
275 (B) the gross floor area of nonresidential development
276 [divided by 1000].
- 277 (b) If the development for which a building permit is sought contains a
278 mix of uses, the Department [of Permitting Services] must separately
279 calculate the development impact tax due for each type of
280 development.
- 281 (c) If the type of proposed development cannot be categorized under
282 Sections 52-47[(r)](p) and [(w)](u), the Department [of Permitting
283 Services] must use the rate assigned to the type of development which
284 generates the most similar traffic impact characteristics.
- 285 (d) The Department [of Permitting Services] must calculate the amount of
286 the development impact tax due under this Article in effect when the
287 building permit application is submitted to the Department, or before
288 a building permit is issued by Gaithersburg or Rockville.
- 289 (e) A building permit application, or if the property is located in
290 Gaithersburg or Rockville a request to determine the amount of the

impact tax, must be resubmitted to the Department [of Permitting Services] if the applicant changes the project by:

- (1) increasing the number of dwelling units;
- (2) increasing the gross floor area of nonresidential development;
- or
- (3) changing the type of development so that the development impact tax would be increased.

The Department must recalculate the development impact tax based on the plans contained in the resubmitted building permit application.

52-52. [Biennial recalculation of development impact tax.] Reserved

[(a) Before July 1, 1988, and at least every 2 years thereafter, the County Executive must prepare a report to the County Council on development impact taxes. The report must contain recommendations on:

- (1) the methodology for establishing and the data in support of the per-unit development impact taxes;
- (2) the impact tax district transportation program; and
- (3) the alteration or addition of impact tax districts.]

[(b) After receipt of the report prepared by the County Executive, the per-unit development impact tax imposed for each impact tax district, must be reviewed, recalculated if necessary, and, after a public hearing, readopted by the County Council. Until the County Council takes action, the development impact taxes remain in effect. The County Council may amend the tax schedule at any time if a master plan revision is adopted that significantly alters the development buildout or transportation program in an impact tax district.]

[(c) In the impact tax recalculation process, the County Council must consider the following factors:

- (1) inflation as measured by changes in a construction cost index used by the Department of Public Works and Transportation;
- (2) changes in the design, engineering, location, right-of-way, or other elements of the highways listed in the impact tax district transportation program;
- (3) a revision to the master plan for an impact tax district;
- (4) changes in the anticipated land uses projected for an impact tax district; and
- (5) changes in the methodology and the data by which the per-unit development impact tax is calculated.]

52-53. Restrictions on use and accounting of development impact tax funds.

- (a) The funds collected by [reason of establishment of] the development impact tax must be used solely [for the purpose of funding the impact tax district transportation program in the impact tax district from which the development impact tax was collected] to fund County or municipal transportation improvements of the types listed in Section 52-58. In appropriating funds collected by the development impact tax, the Council should, to the extent [[possible]] feasible, designate funds to be used for transportation improvements in the [[general geographic]] planning policy area from which the funds were collected or an adjacent policy area. In any fiscal year, development impact tax funds may be spent only to the extent that the amount of funds from other County or city sources appropriated for

transportation improvements of the types listed in Section 52-58
during that year exceeds \$12 million.

- (b) Upon receipt of development impact taxes, the Department of Permitting Services must transfer the taxes to the Department of Finance for crediting to the appropriate account.
- (c) The Department of Finance must establish separate accounts for [each impact tax district] the City of Gaithersburg, the City of Rockville, and the balance of the County, and must maintain records for each account so that development impact tax funds collected can be segregated by [the impact tax district of origin] each of these areas. [The following accounts must be initially established:
 - (1) Germantown;
 - (2) Eastern Montgomery County.]
- (d) The Department of Finance must maintain and keep adequate financial records [for each account] that must:
 - (1) Show the source and disbursement of all revenues;
 - (2) Account for all monies received; and
 - (3) Ensure that the disbursement of funds from each account is used exclusively for the financing of the type of transportation improvements listed in [the applicable impact tax district transportation program] Section 52-58.
- (e) Interest earned by each account must be credited to that account and must be used solely for the purposes specified for funds of the account.
- (f) The Department of Finance must annually issue a statement [for each account].

- (g) Development impact taxes must be disbursed [from an account] only for the purposes for which the development impact tax has been imposed, including reimbursement to the County or either city of advances made for these purposes from other available funds.

52-54. Refunds.

- (a) Any person who has paid a development impact tax may apply for a refund of the tax if:

- (1) The County has [failed to provide impact highways in the applicable impact tax district in accordance with the applicable current impact tax district transportation program] not appropriated the funds for transportation improvements of the types listed in Section 52-58, or otherwise formally designated a specific improvement of a type listed in Section 52-58 to receive the funds, by the end of the [[fifth]] sixth fiscal year after the tax is collected;
- (2) The building permit has been revoked or has lapsed because of noncommencement of construction;
- (3) The project has been physically altered, resulting in a decrease in the amount of the development impact tax due; or
- (4) A declaration encumbering the property for which the development impact tax has been paid has been recorded in the County land records as required under Section 14-17(c) and the applicant is entitled to a credit under Section 52-55(d).

* * *

- (d) The Director of Permitting Services must investigate each claim and hold a hearing at the request of the petitioner. Within 3 months after receiving a petition for refund, the Director of Permitting Services

must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decisions, including, as appropriate, a determination of whether impact [highways have been provided in the applicable impact tax district transportation program] tax funds collected from the petitioner, calculated on a first-in-first-out basis, have been appropriated or otherwise formally designated for transportation improvements of the types listed in Section 52-58 within [[5]] 6 fiscal years. If a refund is due the petitioner, the Director of Permitting Services must notify the Department of Finance [and request that a refund payment be made to the petitioner] and, if the property is located in Gaithersburg or Rockville, the finance director of that city.

* * *

52-55. Credits.

- (a) A property owner is entitled to a credit if the owner, before [July 29, 1986] July 31, 2001, entered into a participation agreement, or a similar agreement with the state or a municipality, the purpose of which was to provide additional [staging ceiling] transportation capacity [in an impact tax district]. A property owner is also entitled to a credit if the owner received approval, before July 31, 2001, of a subdivision plan, development plan, or similar instrument that required the owner to build or contribute to a transportation improvement which provides additional transportation capacity. The Department of Public Works and Transportation must calculate the credit. The credit must equal the amount of any charge paid under the participation agreement. The Department may give credit only for building permit applications for development on the site covered by

the participation agreement. The Department must not give a refund for a credit earned under this subsection.

- (b) A property owner [may construct] must receive a credit for constructing or contributing to an improvement of the type listed in [the impact tax district transportation program] Section 52-58 if the improvement reduces traffic demand or provides additional [[policy area or local area]] transportation capacity. [Construction of the improvement, however, must be in addition to all other on-site transportation improvements required by the County, or the Planning Board as a condition of subdivision, site plan, or other development approval.]

- (1) If the property owner elects to make the improvement, the owner must enter into an agreement with a municipality or the County before any building permit is issued. The agreement must contain:

- (A) the estimated cost of the improvement,
- (B) the dates or triggering actions [[for initiating and completing]] to start and finish the improvement,
- (C) a requirement that the property owner complete the improvement according to applicable municipal or County standards, and
- (D) such other terms and conditions as the municipality or County finds necessary.

- (2) The [Director of the] Department of Public Works and Transportation must:

- (A) review the improvement plan,
- (B) verify costs and time schedules,

- (C) determine whether the improvement is an impact [highway] transportation improvement which reduces traffic demand or adds transportation capacity,
- (D) determine the amount of the credit for the improvement that will apply to the development impact tax, and
- (E) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.

(3) An applicant for subdivision, site plan, or other development approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, development plan, or similar instrument, may seek a declaration of allowable credits from the Department of Public Works and Transportation. The Department must decide, within 15 days after receiving all necessary materials from the applicant, whether any transportation improvement which the applicant has constructed or contributed to, or intends to construct or contribute to, will receive a credit under this subsection. If during the initial 15-day period after receiving all necessary materials the Department notifies the applicant that it needs more time to review the proposed improvement, the Department may defer its decision an additional 15 days. If the Department indicates under this paragraph that a specific improvement is eligible to receive a credit, the Department must allow a credit for that improvement when taking action under paragraph (2).

476 [(3)] (4) The County must not provide a refund for a credit which is
 477 greater than the applicable development impact tax. If,
 478 however, the amount of the credit exceeds the amount of the
 479 development impact tax due, the property owner may apply the
 480 excess credit toward the development impact taxes imposed on
 481 other building permits for development in the same [[impact tax
 482 district]] or an adjacent planning policy area and with the same
 483 ownership. In this Section, a property has the same ownership
 484 as another property if the same legal entity owns at least 30% of
 485 the equity in both properties.

486 * * *

487 (e) Any property owner who, before May 1, 2001, built all or part of a
 488 project in the Clarksburg [[impact tax district]] planning policy area
 489 which [[is]] was listed in the impact tax transportation program
 490 (including building any road which would be widened under the
 491 program) is entitled to a credit equal to the reasonable cost of the
 492 improvement. The Department of Public Works and Transportation
 493 must calculate the credit. The Department must not give a refund
 494 for a credit earned under this subsection.

495 (f) A property owner may transfer a credit against the development
 496 impact tax to another property owner in the [[impact tax district]]
 497 planning policy area where the credit originated or an adjacent
 498 planning policy area if the transferor received the credit on or before
 499 August 7, 1992 in exchange for the sale of land to the County. The
 500 transferee is entitled to the amount of credit transferred to it, up to the
 501 amount of unpaid impact tax the transferee owes. The Department
 502 must not give a refund for a credit used under this subsection. The

Department must not allow more than \$2,750,000 in credits under this subsection.

52-56. Appeals.

After determination of the amount of the development impact tax or credit due, an applicant for a building permit or a property owner may appeal to the Maryland Tax Court to the extent permitted by state law or, if the Maryland Tax Court does not have jurisdiction, to the Circuit Court under the Maryland Rules of Procedure that regulate administrative appeals. If the appealing party posts a bond or other sufficient surety satisfactory to the County Attorney in an amount equal to the applicable development impact tax as calculated by the Department of Permitting Services, the Department or municipality must issue the building permit if all other applicable conditions have been satisfied. The filing of an appeal does not stay the collection of the development impact tax until a bond or other surety satisfactory to the County Attorney has been filed with the Department of Permitting Services.

52-57. Development impact taxes[; methodology].

[(a) Development impact taxes must be calculated by the following process:

- (1) Calculate the difference between the amount of residential (in dwelling units) and nonresidential development (in 1,000 sq. ft. gross floor area increments) possible in each impact tax district based on existing or proposed zoning and existing development (including unbuilt development for which building permits have been secured). These figures establish the full range of development to which an impact tax will be applied as well as the full amount of development that will need to be

529 accommodated by the additional impact highways to be funded,
530 in part, through the impact tax.

531 (2) Determine the full range of highway improvements needed to
532 accommodate the projected development through buildout, and
533 establish the estimated costs of the improvements. These are the
534 impact highway improvements included in the impact tax
535 district transportation program under Section 52-58.

536 (3) Establish relative trip impacts for various land use categories in
537 order to assure that each land use is subject to a reasonable pro
538 rata charge based upon its relative impact on the impact
539 highways system in the impact tax district. The relative impacts
540 are measured by the calculation of a trip impact value which is
541 a function of trip generation rates as modified by trip length
542 characteristics and percent of new trips generated by a
543 particular use.

544 (4) Multiply the number of units of projected new development for
545 the major land use categories (residential and nonresidential) by
546 the trip impact value for that category to establish the percent of
547 impact highway improvement costs to be assigned to residential
548 versus nonresidential development.

549 (5) Multiply the percent by the total costs to be borne by impact
550 taxes to establish a total cost burden for residential versus
551 nonresidential development; in the same way, divide the costs
552 for residential and nonresidential among the specific land use
553 categories.

- 554 (6) Divide the pro rata costs to be borne by each land use category
 555 by the per-unit traffic impact value of that land use category to
 556 arrive at a pro rata cost per unit for each land use category.
- 557 (7) Multiply 50% by the pro rata cost per unit for each land use
 558 category (calculated in Step 6) to determine the development
 559 impact tax for each land use category.]

560 [(b)] (a) The development impact tax rates [for each impact tax district] are:

Land Use Type	<u>Rate</u>	[Germantown]	[Eastern Montgomery County]	[Clarksburg]
<u>Single-family detached residential (per [dwelling unit] square foot GFA)</u>	<u>\$1.10</u>	[\$2,492]	[\$1,727]	[\$2,753]
<u>Single-family attached residential (per square foot GFA)</u>	<u>\$1.75</u>			
<u>Multifamily residential (per [dwelling unit] square foot GFA)</u>	<u>\$1.45</u>	[\$1,794]	[\$1,243]	[\$1,981]
<u>Multifamily-senior residential (per [dwelling unit] square foot GFA)</u>	<u>\$0.45</u>	[\$531]	[\$368]	[\$573]
<u>Office (per sq. ft. GFA)</u>	<u>\$2.10</u>	[\$2]	[\$2]	[\$2]
<u>Industrial (per sq. ft. GFA)</u>	<u>\$1.05</u>	[\$1]	[\$1]	[\$1]
<u>Retail (per sq. ft. GFA)</u>	<u>\$2.65</u>	[\$5.08]	[\$3.52]	[\$5.61]
<u>[Places of worship (per sq. ft. GFA)]</u>		[\$.29]	[\$.20]	[\$.32]

[Private elementary and secondary schools (per sq. ft. GFA)]		[\$.48]	[\$.33]	[\$.53]
Other nonresidential (per sq. ft. GFA)	<u>\$0.80</u>	[\$5.62]	[\$3.89]	[\$6.20]

(b) Except as provided in subsection (c), any development located in a Metro Station Policy Area, as defined in the Annual Growth Policy, must pay the tax at 50% of the rate listed in subsection (a) for the type of development.

(c) Any development located in a Metro Station Policy Area, as defined in the Annual Growth Policy, that receives approval of a preliminary plan of subdivision under the Alternative Review Procedure for Metro Station Policy Areas must pay the tax at the rate listed in subsection (a) for that type of development. Any credits for building or contributing to transportation capacity improvements under Section 52-55 do not apply to any development that is approved under the Alternative Review Procedure for Metro Station Policy Areas.

~~[(b)]~~ (d) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates set in this Section.

~~[(c)]~~ (e) The Director of Finance must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the annual average increase or decrease in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of 5 cents. The

Director must publish the amount of this adjustment not later than
May 1 of each odd-numbered year.

52-58. Impact tax district transportation program.

[The impact tax district transportation program is as follows:]

<i>[Road Name</i>	<i>Limits</i>	<i>Improvement</i>	<i>Cost</i>	<i>Timing (Completion by FY 99- 2004 Denoted by *)]</i>
<i>[(a) Germantown:</i>				
Century Boulevard	Northern terminus (2001) to 1000' north	4-Lane Undivided Construct	\$2,085,000	
Great Seneca Highway	Middlebrook Road to Great Seneca Creek	4-Lane Divided Construct	\$14,700,000	*(Part): 4L from Middlebrook to Great Seneca Creek
Eastern Arterial (M- 83)	Northern Planning Area Boundary to Great Seneca Creek	6-Lane Divided Construct with an Interchange at M-61	\$38,059,000	
Father Hurley Boulevard/ Ridge Road (M-27)	MD 27 to MD 118 Relocated	6-Lane Divided Construct from MD 27 to Crystal Rock Drive, with an interchange at I- 270 and 4L divided from Wisteria Drive	\$62,788,000	*(Part): 6L from Crystal Rock to A-19 w/interchang e at I-270; 4L from A-19 to MD 27; 21 A-254 to MD

		to MD 118 Relocated		118
MD 118 Relocated	2000' south of Clopper Road to Wisteria Drive and from I-270 to MD 355	6L Divided Construct from MD 355 to I-270 & from Wisteria Drive to Riffleford Road	\$35,935,000	*(Part): 6L from Wisteria Drive to MD 117 and I-270 to MD 355; 2L from MD 117 to 2000' south
German-town Rd. Extended (M-61)	MD 355 to Watkins Mill Rd.	6-Lane Divided Construct	\$11,113,000	
Crystal Rock Drive	MD 118 to M-27	Add 2 lanes	\$6,225,000	
Middlebrook Road	M-27 to Eastern Arterial	4L Divided Reconstruct from M-83 to MD 355; 6L divided reconstruct from MD 355 to Great Seneca Highway; add 2L from Great Seneca Highway to M-27	\$20,897,000	*(Part): 6L from Great Seneca Highway to I-270, 6L from I-270 to MD 355
Watkins Mill Road (A-17)	M-83 to Planning Area Boundary	4-Lane Undivided Reconstruct	\$5,322,000	
A-19 (Observation Drive)	MD 118 Relocated to Planning Area Boundary	4-Lane Undivided Construct with M-27	\$37,518,000	*(Part); 4L from MD 118 Relocated through

		Interchange		Milestone development
Waring Station Road	Wisteria Drive to Clopper Road	4-Lane Undivided Reconstruct	\$4,619,000	
A-254	MD 118 Relocated to Great Seneca Highway	4-Lane Undivided Construct	\$3,063,000	*(Part): 4L from MD 118 Relocated to Great Seneca Highway
I-4 (Northern Crossing)	Century Boulevard to Observation Drive	4-Lane Undivided Construct	\$9,643,000	
Park and Ride Lots	Planning Area	2550 spaces	\$16,575,000	*(Part) 769 spaces
German-town Transit Center	MD 118/Century Blvd.	Construct 200-space park & ride	\$1,913,000	
Total			\$270,455,000	
50%			\$135,227,500]	
[(b) Eastern Montgomery County:				
Briggs Chaney Road	Automobile Boulevard to P.G. County Line	4-6 Lane Reconstruct	\$14,668,000	*(Part): Reconstruct bridge
Fairland Road	E. Randolph Road Relocated to P.G. County Line	4-Lane Undivided Reconstruct from U.S. 29 to P.G. County Line and add 2L	\$18,716,000	

		from E. Randolph Road to Old Columbia Pike		
Greencastle Road	Robey Road to P.G. County Line	4-Lane Undivided Reconstruct	\$3,257,000	
Norbeck Road Extended	Layhill Road to New Hampshire Avenue	2-Lane Construct	\$27,115,000	
East Randolph Road	Burkhart Street to Old Columbia Pike	4-Lane Undivided Reconstruct	\$12,477,000	*
Park-and-Ride Lots		1814 spaces	\$11,791,000	*
<i>Total</i>			\$88,024,000	
50%			\$44,012,000]	
[(c) Clarksburg:				
Foreman Blvd (A-306)	MD 355 to A-305	Construct 2 lanes	\$1,605,035	
Gateway Center Drive (A-300)	A-260 to A-301	Widen to 4 lanes divided	\$3,602,537	
Midcounty Highway (M-83)	Brink Road to MD 27	Construct 6 lanes divided	\$8,728,439	
Midcounty Highway (A-305)	MD 27 to (Stringtown Road) MD 355	Construct 2/4 lanes divided	\$38,516,291	

Newcut Road (A-302)	MD 121 to MD 27	Construct 2/4 lanes divided	\$36,576,638
Observation Drive (A-19)	MD 355 to Germantown boundary	Construct 4 lanes divided	\$21,971,391
Old Frederick Road (B-1)	Through town center	Construct 2 lanes	\$2,675,814
Shawnee Lane (A-301)	Gateway Center Drive (A-300) to MD 355(A- 251)	Widen to 4 lanes divided	\$8,121,588
Stringtown Road (A-260)	I-270 to A-305	Construct 4 lanes divided	\$10,889,280
Park & Ride Spaces		155 spaces	\$1,054,899
Total			\$133,741,910
50%			\$66,870,955]

586 [(c)] Projects [to] that may be funded with impact taxes include any
587 [improvements to master-planned major arterial roadways, other
588 planned arterials needed for access within impact tax districts, and
589 park-and-ride facilities.]:

590 (a) new road or widening of an existing road that adds highway or
591 intersection capacity or improves transit service or bicycle
592 commuting, such as bus lanes or bike lanes;

593 (b) new or expanded park-and-ride lot or transit center;

594 (c) bus added to the Ride-On bus fleet, but not a replacement bus;

595 (d) new bus shelter, but not a replacement bus shelter;

596 (e) hiker-biker trail used primarily for transportation;

- (f) bicycle locker that holds at least 8 bicycles; [[or]]
- (g) sidewalk connector to a major activity center or along an arterial or major highway; or
- (h) in a Metro Station Policy Area, as defined in the Annual Growth Policy, or an adjacent policy area, the operating expenses of any transit or trip reduction program.

[52-59. Methodology to determine impact tax districts.]

[(a) Impact tax districts are those planning policy areas, or combinations of planning policy area, in which existing and approved development is at or above the staging ceiling as defined by the Annual Growth Policy. Where existing development is at or above the staging ceiling, no further development can occur in the planning policy area without violating the adequate public facilities ordinance transportation standards, unless the staging ceiling is raised. The staging ceiling can be raised by the addition of major improvements beyond those that are programmed. The addition of these unprogrammed improvements will raise the staging ceiling, with the objective of allowing additional development consistent with APFO staging ceiling standards. After an impact tax district has been designated under subsection (b), it must remain an impact tax district until full buildout has occurred.]

[(b) Additional planning policy areas or combinations of planning policy areas may be designated by the County Council as impact tax districts under the procedure in this Article. The County Council must consider the following factors in determining when and whether to add impact tax districts:

- (1) The Annual Growth Policy;
- (2) The standards incorporated in the APFO;

- (3) The projected buildout and timing of the projected buildout of planning policy areas;
- (4) The staging ceiling in planning policy areas;
- (5) The need for and cost of unprogrammed highways necessary to raise the staging ceiling or provide necessary improvements in support of projected development; and
- (6) Any other factor the County council finds relevant.

The principal reason for identifying a planning policy area or combination of planning policy areas as an impact tax district is to prevent the moratorium on development that would otherwise occur by application of APFO staging ceiling standards in a planning policy area where existing development is at or above the staging ceiling.]

Sec. 2. Effective Date. This Act takes effect on July 1, 2002, and applies to any development for which an application for a building permit is filed on or after that date. Each taxpayer must pay the development impact tax at ~~[[50%]]~~ 25% of the rates set in Section 52-57, as amended by Section 1 of this Act, for building permit applications filed between July 1, 2002 and December 31, 2002; ~~[[75%]]~~ 50% of the rates set in Section 52-57 for building permit applications filed between January 1, 2003, and June 30, 2003; 75% of the rates set in Section 52-57 for building permit applications filed between July 1, 2003 and December 31, 2003; and 100% of the rates set in Section 52-57 for building permit applications filed on or after ~~[[July 1, 2003]]~~ January 1, 2004. To the extent that any taxpayer pays a lower rate than that set in Section 52-57 because the previous sentence applies, any credit claimed under Section 52-55 must be reduced by the same ratio.

648 *Approved:*

649

650 /S/ November 1, 2001

Blair Ewing, President, County Council	Date
--	------

651 *Disapproved:*

652

653 /S/ November 12, 2001

Douglas M. Duncan, County Executive	Date
-------------------------------------	------

654 *This is a correct copy of Council action.*

655

656

Mary A. Edgar, CMC, Clerk of the Council	Date
--	------